

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERNEST LEE BROCKMAN, JR.,

Defendant-Appellant.

UNPUBLISHED

February 6, 2007

No. 266364

Wayne Circuit Court

LC No. 05-006452-01

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317, operating with a suspended/revoked license causing death, MCL 257.904(4), and receiving and concealing stolen property of \$1,000 or more, but less than \$20,000, MCL 750.535(3)(a). Defendant was also convicted of first-degree fleeing and eluding, MCL 257.602a(5), however, the conviction was dismissed at sentencing because the trial court determined that it constituted double jeopardy, given that the finding of fleeing and eluding was “the predicate for the mens rea on the second degree murder [conviction].” The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 162 months to 45 years’ imprisonment for the second-degree murder conviction, 10 to 15 years’ imprisonment for the operating with a suspended/revoked license causing death conviction, and three to five years’ imprisonment for the receiving and concealing stolen property conviction. Defendant’s sole argument on appeal is that there was insufficient evidence to support his second-degree murder conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). This Court reviews the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The elements of second-degree murder are: (1) a death, (2) caused by the defendant’s act, (3) with malice, and (4) without justification. *People v Mendoza*, 468 Mich 527, 534; 664 NW2d 685 (2003). Malice requires an intent to kill, an intent to do great bodily harm, or an intent to create a high risk of death or great bodily harm with knowledge that such is the probable result. *People v Wofford*, 196 Mich App 275, 278; 492 NW2d 747 (1992). The prosecution, for

purposes of second-degree murder, is not required to prove that the defendant actually intended to harm or kill; rather, the prosecution must prove the intent to do an act that is in obvious disregard of life-endangering consequences. *People v Werner*, 254 Mich App 528, 531; 659 NW2d 688 (2002). Malice may be inferred from the facts and circumstances of the killing. *Wofford*, *supra* at 278.

The uncontroverted trial testimony revealed that defendant led police on a dangerous high speed chase. Police stopped defendant at a gas station when Detective Corey Bauman parked in front of defendant's truck and asked him to stop and put his hands up. Instead of complying, defendant got back into the truck and sped away. Then, another police vehicle, who had its police lights and sirens activated directed defendant to stop. Despite the officer's attempts to get defendant to pull over, defendant drove on for miles in a frantic effort to elude police. Defendant drove in excess of the speed limit, in some instances in gross excess, disobeyed stop signs and red lights and weaved in and out of traffic. Defendant's blatantly dangerous driving caused nearby cars to pull over to the side of the road in an effort to avoid him. Even after an officer intentionally hit defendant's vehicle in order to get him to stop, defendant kept driving. The chase ended when defendant, driving 65 to 70 miles per hour in a residential zone of 25 mile per hour, collided with another vehicle, killing the driver of the other vehicle. Even after colliding with the other vehicle and being ejected from the truck, defendant tried to flee the scene on foot, but was eventually caught. Defendant's actions show recklessness to an extreme degree. Contrary to defendant's assertions, his actions well support a finding of second-degree murder, given that he created and disregarded a substantial risk of death or great bodily harm. *Werner*, *supra* at 531. Similar cases of vehicular homicide have been considered sufficient to sustain the malice requirement of second-degree murder. See *People v Vasquez*, 129 Mich App 691; 341 NW2d 873 (1983) (evidence is sufficient to support second-degree murder where the defendant commandeered a police car, drove away from the police at excessive speeds, disobeyed traffic signals, and drove after nightfall on the main traffic artery of general access). Accordingly, in light of defendant's extremely reckless actions, which resulted in the death of another, there was sufficient evidence to convict him of second-degree murder.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio